

**Effective 5/4/2022**

**Renumbered 5/3/2023**

**62A-2-123 Congregate care program regulation.**

- (1) A congregate care program may not use a cruel, severe, unusual, or unnecessary practice on a child, including:
  - (a) a strip search unless the congregate care program determines and documents that a strip search is necessary to protect an individual's health or safety;
  - (b) a body cavity search unless the congregate care program determines and documents that a body cavity search is necessary to protect an individual's health or safety;
  - (c) inducing pain to obtain compliance;
  - (d) hyperextending joints;
  - (e) peer restraints;
  - (f) discipline or punishment that is intended to frighten or humiliate;
  - (g) requiring or forcing the child to take an uncomfortable position, including squatting or bending;
  - (h) for the purpose of punishing or humiliating, requiring or forcing the child to repeat physical movements or physical exercises such as running laps or performing push-ups;
  - (i) spanking, hitting, shaking, or otherwise engaging in aggressive physical contact;
  - (j) denying an essential program service;
  - (k) depriving the child of a meal, water, rest, or opportunity for toileting;
  - (l) denying shelter, clothing, or bedding;
  - (m) withholding personal interaction, emotional response, or stimulation;
  - (n) prohibiting the child from entering the residence;
  - (o) abuse as defined in Section 80-1-102; and
  - (p) neglect as defined in Section 80-1-102.
- (2) Before a congregate care program may use a restraint or seclusion, the congregate care program shall:
  - (a) develop and implement written policies and procedures that:
    - (i) describe the circumstances under which a staff member may use a restraint or seclusion;
    - (ii) describe which staff members are authorized to use a restraint or seclusion;
    - (iii) describe procedures for monitoring a child that is restrained or in seclusion;
    - (iv) describe time limitations on the use of a restraint or seclusion;
    - (v) require immediate and continuous review of the decision to use a restraint or seclusion;
    - (vi) require documenting the use of a restraint or seclusion;
    - (vii) describe record keeping requirements for records related to the use of a restraint or seclusion;
    - (viii) to the extent practicable, require debriefing the following individuals if debriefing would not interfere with an ongoing investigation, violate any law or regulation, or conflict with a child's treatment plan:
      - (A) each witness to the event;
      - (B) each staff member involved; and
      - (C) the child who was restrained or in seclusion;
    - (ix) include a procedure for complying with Subsection (5); and
    - (x) provide an administrative review process and required follow up actions after a child is restrained or put in seclusion; and
  - (b) consult with the office to ensure that the congregate care program's written policies and procedures align with applicable law.
- (3) A congregate care program:

- (a) may use a passive physical restraint only if the passive physical restraint is supported by a nationally or regionally recognized curriculum focused on non-violent interventions and de-escalation techniques;
  - (b) may not use a chemical or mechanical restraint unless the office has authorized the congregate care program to use a chemical or mechanical restraint;
  - (c) shall ensure that a staff member that uses a restraint on a child is:
    - (i) properly trained to use the restraint; and
    - (ii) familiar with the child and if the child has a treatment plan, the child's treatment plan; and
  - (d) shall train each staff member on how to intervene if another staff member fails to follow correct procedures when using a restraint.
- (4)
- (a) A congregate care program:
    - (i) may use seclusion if:
      - (A) the purpose for the seclusion is to ensure the immediate safety of the child or others; and
      - (B) no less restrictive intervention is likely to ensure the safety of the child or others; and
    - (ii) may not use seclusion:
      - (A) for coercion, retaliation, or humiliation; or
      - (B) due to inadequate staffing or for the staff's convenience.
  - (b) While a child is in seclusion, a staff member who is familiar to the child shall actively supervise the child for the duration of the seclusion.
- (5) Subject to the office's review and approval, a congregate care program shall develop:
- (a) suicide prevention policies and procedures that describe:
    - (i) how the congregate care program will respond in the event a child exhibits self-injurious, self-harm, or suicidal behavior;
    - (ii) warning signs of suicide;
    - (iii) emergency protocol and contacts;
    - (iv) training requirements for staff, including suicide prevention training;
    - (v) procedures for implementing additional supervision precautions and for removing any additional supervision precautions;
    - (vi) suicide risk assessment procedures;
    - (vii) documentation requirements for a child's suicide ideation and self-harm;
    - (viii) special observation precautions for a child exhibiting warning signs of suicide;
    - (ix) communication procedures to ensure all staff are aware of a child who exhibits warning signs of suicide;
    - (x) a process for tracking suicide behavioral patterns; and
    - (xi) a post-intervention plan with identified resources; and
  - (b) based on state law and industry best practices, policies and procedures for managing a child's behavior during the child's participation in the congregate care program.
- (6)
- (a) A congregate care program:
    - (i) subject to Subsection (6)(b), shall facilitate weekly confidential voice-to-voice communication between a child and the child's parents, guardian, foster parents, and siblings, as applicable;
    - (ii) shall ensure that the communication described in Subsection (6)(a)(i) complies with the child's treatment plan, if any; and
    - (iii) may not use family contact as an incentive for proper behavior or withhold family contact as a punishment.
  - (b) For the communication described in Subsection (6)(a)(i), a congregate care program may not:

- (i) deny the communication unless state law or a court order prohibits the communication; or
- (ii) modify the frequency or form of the communication unless:
  - (A) the office approves the modification; or
  - (B) state law or a court order prohibits the frequency or the form of the communication.